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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

JOHN V. COLEN, Plaintiff and Appellant, v. RIVERSIDE COUNTY BOARD OF SUPERVISORS, Defendant and Respondent.	E047181 (Super.Ct.No. RIC496845) **OPINION**

APPEAL from the Superior Court of Riverside County. Sharon J. Waters, Judge. Affirmed.

John V. Colen, in pro. per., for Plaintiff and Appellant.

Rinos & Martin, Linda B. Martin, and Celeste Brustowicz for Defendant and Respondent.

John V. Colen appeals from the denial of his petition for relief from the claim filing requirements of the Government Claims Act. (Gov. Code, § 810 et seq.)

I

GENERAL LEGAL PRINCIPLES

"Under the Government Claims Act, 'no suit for "money or damages" may be brought against a public entity until a written claim has been presented to the entity and the claim either has been acted upon or is deemed to have been rejected. [Citations.]' [Citation.]" (*Sparks v. Kern County Bd. Of Supervisors* (2009) 173 Cal.App.4th 794, 798.)

Ordinarily, a claimant must present a personal injury claim against a public entity within six months after the claim accrued. (Gov. Code, § 911.2, subd. (a).) However, if the claimant misses this deadline, he or she may apply to the public entity for leave to present a late claim. (Gov. Code, § 911.4.) An application to present a late claim must be made not more than one year after the claim accrued. (Gov. Code, § 911.4, subd. (b).) This one-year period is tolled as long as the claimant is mentally incapacitated and has no guardian or conservator. (Gov. Code, § 911.4, subd. (c)(1).)

Next, if the public entity denies (or fails to act on) the application for leave to present a late claim, the claimant may petition the court for relief from the claim filing requirements. (Gov. Code, § 946.6.) The court, however, cannot grant relief from failure to meet the one-year deadline. (1 Cal. Government Tort Liability Practice (Cont.Ed.Bar 4th ed. 2009) § 7.45, p. 379, and cases cited.) "When the underlying application to file a late claim is filed more than one year after accrual of the cause of action, the court is

without jurisdiction to grant relief . . . . [Citations.]" (*Greyhound Lines, Inc. v. County of Santa Clara* (1986) 187 Cal.App.3d 480, 488.)

We review an order denying a petition for leave to file a late claim for abuse of discretion. (*Bettencourt v. Los Rios Community College Dist.* (1986) 42 Cal.3d 270, 275.)

II

FACTUAL AND PROCEDURAL BACKGROUND

Colen is asserting personal injury claims against the County of Riverside arising out of his treatment at the Riverside County Regional Medical Center. That treatment was complete by not later than February 2004. He claims that, as a result of delayed discovery, his causes of action did not accrue until sometime thereafter. He concedes, however, that they accrued, at the latest, by August 2006.

In July 2007, Colen presented a claim to the Riverside County Board of Supervisors (the County).

In August 2007, the County sent him a "Notice of Insufficiency of Claim" (capitalization omitted), on the ground that the claim did not state the date of the underlying event. (See Gov. Code, § 910, subd. (c).)

In September 2007, Colen presented an amended claim, this time stating that the date of the underlying event was February 2007. In October 2007, the County denied the amended claim as untimely.

In March 2008, Colen applied to the County for leave to present a late claim. Later in March, the County denied the application.

In April 2008, Colen filed the present petition for relief from the claim filing requirement. In it, he asserts that he was "mentally incapacitated" from October 2005 through January 2007.

In September 2008, after hearing argument, the trial court denied the petition.

III

DISCUSSION

Colen contends that the trial court erred by denying him relief. He argues that, as a result of delayed discovery, his causes of action did not accrue until August 2006. Even if so, however, he did not apply to the County for leave to present a late claim until March 2008, which was more than one year after his causes of action accrued.

Colen therefore argues that the one-year period was tolled because he was mentally incapacitated. In his declaration, he stated that he was "physically and mentally incapacitated as an elderly person" while undergoing five operations between October 2005 and January 2007. The trial court, however, was not required to believe him on this point. (See *Martin v. City of Madera* (1968) 265 Cal.App.2d 76, 80-82.) "[D]eclarations setting forth only conclusions, opinions or ultimate facts are insufficient. [Citations.]" (*Kendall v. Barker* (1988) 197 Cal.App.3d 619, 624.) He did not submit a declaration by a physician or other expert. The only support he gave was that an operation in August 2006 "left him 'drained of energy' by his loss of red blood cell components that were

replaced slowly." This failed to show that he was mentally incapacitated at all, much less so mentally incapacitated as to be unable to file a timely claim.

Next, Colen argues that the trial court erred by not excluding a declaration that the County submitted. However, he never objected to the declaration in its entirety; he merely objected to certain exhibits to the declaration. Even more important, he never pressed the trial court for a ruling on his objections. Accordingly, he forfeited them for purposes of appeal. (*Soukup v. Law Offices of Herbert Hafif* (2006) 39 Cal.4th 260, 291, fn. 17.) Separately and alternatively, he has not shown prejudice. (Cal. Const., art. VI, § 13; Code Civ. Proc., § 475; Evid. Code, § 353, subd. (b).) His own moving papers demonstrated that his petition was time-barred. Thus, even if the County's declaration had been excluded, the trial court would still have denied the petition.

Finally, Colen complains because the County filed not one, but two memoranda in opposition to his petition. He did not raise this argument below, and thus he has forfeited it for purposes of appeal. In any event, the County acted properly. After it filed its first opposition, the hearing on the petition was continued, and Colen was given leave to file a new memorandum in support. The County was entitled to respond. Colen claims that certain statements in the County's opposition were inaccurate; once again, however, he did not raise this argument below, and he has not shown prejudice for purposes of appeal.

We therefore conclude that the trial court properly denied the petition.

IV

DISPOSITION

The order appealed from is affirmed. In the interests of justice, each side shall bear its own costs on appeal.

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RICHLI
J.

We concur:

HOLLENHORST
Acting P.J.

GAUT
J.